

1 Mark H. Gunderson, Esq. (SBN: 2134)
 Catherine A. Reichenberg, Esq. (SBN: 10362)
 2 GUNDERSON LAW FIRM
 5345 Kietzke Lane, Suite 200
 3 Reno, Nevada 89511
 Telephone: (775) 829-1222
 4 Facsimile: (775) 829-1226

5 Deborah A. Klar, Esq. (SBN: CA 124750)
 Teri T. Pham, Esq. (SBN: CA 193383)
 6 Tuneen E. Chisolm, Esq. (SBN: CA 211741)
 LINER YANKELEVITZ
 7 SUNSHINE & REGENSTREIF LLP
 1100 Glendon Avenue, 14th Floor
 8 Los Angeles, California 90024-3503
 Telephone: (310) 500-3500
 9 Facsimile: (310) 500-3501
 ADMITTED PRO HAC VICE

10 Attorneys for Plaintiffs
 11 DENNIS MONTGOMERY and the MONTGOMERY
 FAMILY TRUST
 12

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15
 16 DENNIS MONTGOMERY and the
 MONTGOMERY FAMILY TRUST,

17 Plaintiffs,

18 vs.

19 ETREPPID TECHNOLOGIES, LLC; WARREN
 20 TREPP; and the UNITED STATES
 DEPARTMENT OF DEFENSE,

21 Defendants.
 22

23 AND RELATED CASES.
 24

) Case No. 3:06-CV-00056-PMP-VPC
) BASE FILE

) (Consolidated with Case No. 3:06-CV-
) 00145-PMP-VPC)

) **EVIDENTIARY OBJECTIONS OF THE**
) **MONTGOMERY PARTIES TO THE**
) **SUPPLEMENTAL DECLARATION OF**
) **MICHAEL FLYNN IN RESPONSE TO**
) **MONTGOMERY'S OPPOSITION TO**
) **THE GOVERNMENT'S MOTION TO**
) **COMPEL ENFORCEMENT OF**
) **PROTECTIVE ORDER**

Plaintiffs Dennis Montgomery ("Montgomery") and the Montgomery Family Trust object (jointly, the "Montgomery Parties") to the Supplemental Declaration of Michael Flynn in Response to Montgomery's Opposition to the Government's Motion to Compel Enforcement of Protective Order (the "Motion") as follows.

EVIDENCE:

OBJECTION:

1. Paragraph 2, page 1, and lines 25-28: "Montgomery and his lawyers continue to mislead the Court about critical issues now before the Court, this time in connecting with the government's Motion to Enforce. In this instance, their conduct includes false representations about the contents of my files, *and* about the contents of the transcript of the August 17th hearing. They have also omitted key pages of that transcript.

2. Paragraph 3, page 2, lines 3-9: "In their "Opposition," Montgomery and his lawyer, Deborah Klar explicitly misrepresent the contents of my files. . . . But they fail to recite the most relevant portions of that transcript at p.6, line 25 to p. 7, line 5 and intentionally omit the sequential pages:"

1. Improper opinion testimony. FED. R. EVID. 702. Flynn has not stated the facts upon which he relies or the principles and methods he applies to reach this conclusion. Further, it is inappropriate to set forth legal argument in a declaration. Lack of foundation. FED. R. EVID. 602. Flynn does not establish that Montgomery and his lawyers have misled the court, made false representations or omitted pages of the August 17th transcript.

2. Improper opinion testimony. FED. R. EVID. 702. Flynn has not stated the facts upon which he relies or the principles and methods he applies to reach this conclusion. Further, it is inappropriate to set forth legal argument in a declaration. Lack of foundation. FED. R. EVID. 602. Flynn does not establish that Montgomery or Deborah Klar have misrepresented anything intentionally

EVIDENCE:**OBJECTION:**

1
2
3 3. Paragraph 4, page 3, lines 7-11: "[I]t is
4 obvious to a first grader that Klar's
5 statements limiting the protected
6 material in my files to emails and a
7 "few" originals are outright false. The
8 government knows what the 'few'
9 originals references in connection with
10 the August 17th transcript, as does Klar."

11
12
13
14
15 4. Paragraph 6, page 3, line 26: "Klar's
16 Opposition is simply dishonest."

17
18
19
20
21
22
23
24
25
26
27
28 5. Paragraph 7, page 4, line 12-14: "This

omitted anything.
3. Improper opinion testimony. FED. R.
EVID. 702. Flynn has not stated the facts
upon which he relies or the principles
and methods he applies to reach this
conclusion. Further, it is inappropriate
to set forth legal argument in a
declaration. Lack of foundation. FED. R.
EVID. 602. Flynn does not establish that
Deborah Klar made any false statement.
Additionally, Flynn does not establish
that he has personal knowledge of what
the government "knows."
4. Improper opinion testimony. FED. R.
EVID. 702. Flynn has not stated the facts
upon which he relies or the principles
and methods he applies to reach this
conclusion. Further, it is inappropriate
to set forth legal argument in a
declaration. Lack of foundation. FED. R.
EVID. 602. Flynn does not establish that
the Opposition filed by the
Montgomery's Parties to the Motion or
the declaration of Deborah Klar in
support of the Opposition are
"dishonest."

EVIDENCE:

problem inheres in connection with
virtually all protected information. Klar
and Montgomery know this to be true.”

6. Paragraph 8, page 4, lines 18-23:
“Klar’s suggestion that paper copies of
my email files be turned over to the
Court and electronic version destroyed is
thus not only deceitful, it does not
resolve the redaction of protected
information, and is designed to
perpetrate and create more issues and
problems involving Montgomery’s
potential computer related fabrications.”
He has already been accused of
fabricating emails by the Trepp parties.
Klar’s plan may put the fox inside the
hen house.”

7. Paragraph 8, page 4, lines 23-26: “I
intend to sue those responsible for the

OBJECTION:

EVID. 702. Flynn has not stated the facts
upon which he relies or the principles
and methods he applies to reach this
conclusion. Further, it is inappropriate
to set forth legal argument in a
declaration. Lack of foundation. FED. R.
EVID. 602. Flynn does not establish he
has personal knowledge of what Deborah
Klar or Montgomery purportedly
“know.”

6. Improper opinion testimony. FED. R.
EVID. 702. Flynn has not stated the facts
upon which he relies or the principles
and methods he applies to reach this
conclusion. Further, it is inappropriate
to set forth legal argument in a
declaration. Lack of foundation. FED. R.
EVID. 602. Flynn does not establish that
Klar’s proposal is “deceitful;” or that
Montgomery has been involved in
purported “computer related
fabrications.”

7. Improper opinion testimony. FED. R.
EVID. 702. Flynn has not stated the facts

EVIDENCE:

outrageous abuse of the judicial process
 Montgomery and Klar perpetrated,
 (filing a false declaration to obtain
 jurisdiction is a per se abuse of process,
 among other torts), as well as other
 claims.”

8. Paragraph 8, page 5, lines 1-2: “Klar’s
 plan enables Montgomery to maintain,
 and/or fabricate and or alter emails,
 and/or electronic documents, while mine
 will have been destroyed.

9. Paragraph 8, page 5, lines 2-4: “As of
 May-June 2007, Montgomery was then
 engaged in computer related behavior
 that is related to these potential
 problems.”

OBJECTION:

upon which he relies or the principles
 and methods he applies to reach this
 conclusion. Further, it is inappropriate
 to set forth legal argument in a
 declaration. Lack of foundation. FED. R.
 EVID. 602. Flynn does not establish that
 Montgomery or Deborah Klar committed
 an abuse of judicial process, or filed a
 false declaration.

8. Improper opinion testimony. FED. R.
 EVID. 702. Flynn has not stated the facts
 upon which he relies or the principles
 and methods he applies to reach this
 conclusion. Further, it is inappropriate
 to set forth legal argument in a
 declaration. Lack of foundation. FED. R.
 EVID. 602. Flynn does not establish that
 Klar has proposed any “plan” that
 enables Montgomery to do any of the
 acts Flynn asserts.

9. Improper opinion testimony. FED. R.
 EVID. 702. Flynn has not stated the facts
 upon which he relies or the principles
 and methods he applies to reach this
 conclusion. Further, it is inappropriate
 to set forth legal argument in a
 declaration. Lack of foundation. FED. R.

EVIDENCE:

OBJECTION:

10. Paragraph 8, page 5, lines 8-9:
"Montgomery cannot be trusted with
any electronic information."

10. Improper opinion testimony. FED. R.
EVID. 702. Flynn has not stated the facts
upon which he relies or the principles
and methods he applies to reach this
conclusion. Further, it is inappropriate
to set forth legal argument in a
declaration."

Dated: January 21, 2008

LINER YANKELEVITZ
SUNSHINE & REGENSTREIF LLP

By: _____/s/
Deborah A. Klar
Tuneen E. Chisolm
Attorneys for Plaintiffs
DENNIS MONTGOMERY and the
MONTGOMERY FAMILY TRUST

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICES OF LINER YANKELEVITZ SUNSHINE & REGENSTREIF LLP, and that on **January 22, 2008**, I caused to be served the within document described as **EVIDENTIARY OBJECTIONS OF THE MONTGOMERY PARTIES TO THE SUPPLEMENTAL DECLARATION OF MICHAEL FLYNN IN RESPONSE TO MONTGOMERY'S OPPOSITION TO THE GOVERNMENT'S MOTION TO COMPEL ENFORCEMENT OF PROTECTIVE ORDER** on the interested parties in this action as stated below:

J. Stephen Peek, Esq.
 Jerry M. Snyder, Esq.
 Hale Lane Peek Dennison and Howard
 5441 Kietzke Lane
 Second Floor
 Reno, Nevada 89511
 (775) 327-3000; 786-6179 - FAX
speek@halelane.com; jsnyder@halelane.com
 Attorneys for Etreppid and Warren Trepp

Carlotta P. Wells, Sr. Trial Counsel
 U.S. Dept. of Justice
 Fed. Programs Branch
 Civil Division
 Room 7150
 20 Massachusetts Avenue, NW
 Post Office Box 883
 Washington, D.C. 20044
 (202) 514-4522; 616-8470 - FAX
 E-mail: Carlotta.wells@usdoj.gov
 Attorneys for Department of Defense

Reid H. Weingarten, Esq.
 Brian M. Heberlig, Esq.
 Robert A. Ayers, Esq.
 Steptoe & Johnson, LLP
 1330 Connecticut Avenue, N.W.
 Washington, D.C. 20036-1795
 (202) 429-3000; (202) 429-3902 - FAX
rweingarten@steptoe.com;
bhaberlig@steptoe.com; rayers@steptoe.com
 Attorneys for eTreppid and Warren Trepp

Ralph O. Gomez, Esq., Sr. Trial Counsel
 U.S. Dept. of Justice, Fed. Programs Branch
 Civil Division, Room 6144
 20 Massachusetts Avenue, NW
 Post Office Box 883
 Washington, D.C. 20044
 (202) 514-1318; 616-8470 - FAX
 E-mail: raphael.gomez@usdoj.gov
 Attorneys for Department of Defense

Greg Addington, AUSA
 U.S. DEPARTMENT OF JUSTICE
 100 W. Liberty Street. Suite 600
 Reno, Nevada 89501
 E-mail: Greg.addington@usdoj.gov
 (775) 784-5181 - FAX
 Attorneys for Department of Defense

☒ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in affidavit.

☒ [Federal] I declare that I am employed in the offices of a member of the State Bar of this Court at whose direction the service was made. I declare

PROOF OF SERVICE

1 under penalty of perjury under the laws of the United States of America that
2 the above is true and correct.

3 I declare under penalty of perjury under the laws of the State of California and
4 the United States of America that the foregoing is true and correct.

5 Executed on January 22, 2008, at Los Angeles, California

6 Criss A. Draper
7 (Type or print name)

8 
9 (Signature)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
PROOF OF SERVICE